

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

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| IN RE: |) | |
| |) | |
| JAMES ALLEN MILLER and |) | CASE NO. 09-22005 JPK |
| SHERRIE ANN MILLER, |) | Chapter 7 |
| |) | |
| Debtors. |) | |

ORDER ON OBJECTION TO MOTION FOR RELIEF FROM
AUTOMATIC STAY AND ABANDONMENT ("OBJECTION")

The Objection, filed by the debtors by counsel on June 16, 2009, refers to a motion for relief from stay/abandonment filed by Wells Fargo Bank, N.A. on June 1, 2009. There is nothing in the Objection which states any grounds for denying the substantive relief requested by the motion for stay relief/abandonment, and that motion will be granted by a separate order. Rather, the Objection relates to the creditor's request that the provision of Fed.R.Bankr.P. 4001(a)(3) be waived. The Objection opposes the waiver on the ostensible ground that "the Debtors may lose their opportunity to convert this matter to Chapter 13, if that is the only means of preserving the residence".

The purpose of the 10-day stay provided by Fed.R.Bankr.P. 4001(a)(3) is to delay any action by the creditor with respect to property which has been the subject of an order lifting the stay or abandoning the property from a bankruptcy estate for the 10-day appeal period with respect to that order stated in Fed.R.Bankr.P. 8002(a), so that the party affected by the stay relief/abandonment order may seek the provisional remedy of a stay pending appeal. Absent this slight delay, immediate action by the creditor with respect to the subject property would in most circumstances cause the appeal to become moot. In this case, the debtors have stated no grounds to oppose stay relief/abandonment; rather, the Objection appears to state that the debtors will decide whether or not to seek to convert their case to a case under Chapter 13 within the 10-day period following the entry of the order. Why this 10-day period matters is

beyond the court's ken: not having stated any substantive objection to the relief requested by the motion, the court is at a loss to explain why the debtors couldn't make their decision as to possible requested conversion during the time frame prior to the anticipated entry date of the order on the motion. Be that as it may, because the debtors have objected to the waiver, the court will sustain the Objection, and the order entered by the court will delete any reference to waiver of the 10-day period provided for by Fed.R.Bankr.P. 4001(a)(3).

IT IS ORDERED that the Objection is sustained, and that the final order entered with respect to the creditor's motion will not provide for waiver of the 10-day period stated in Fed.R.Bankr.P. 4001(a)(3).

Dated at Hammond, Indiana on July 2, 2009.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtors, Attorney for Debtors
Trustee, US Trustee
Attorney for Creditor